

cause of race, religion, color, sex, or national origin, and which define actions required for Affirmative Action and Disadvantaged Business Enterprise (DBE) programs.

107.10 INERT WASTE DISPOSAL.

This work consists of the proper disposal of inert material waste on a project. Inert waste includes, but not limited too; Concrete, Steel, and Bituminous Pavements and Base.

For additional information reference the North Dakota Department of Health–Division of Waste Management’s “GUIDELINE 22A–INERT WASTE DISPOSAL VARIANCE.”

When inert material on a project is designated the property of the contractor, and the contractor chooses to waste the material, the material must be disposed in one of two ways:

- A. Disposal of the material at an approved permanent waste management facility.
- B. Waste may be disposed of without the use of a permanent waste management facility if an “INERT WASTE DISPOSAL VARIANCE APPLICATION,” SFN 50278, is filed with, and approved by the North Dakota Department of Health–Division of Waste Management. For guidance in the filing of the application refer to the North Dakota Department of Health–Division of Waste Management’s “GUIDELINE 22A–INERT WASTE DISPOSAL VARIANCE.” Upon approval of the variance, the contractor shall furnish the engineer with an approved copy before any material is disposed at the approved site.

Locations of permanent waste facilities, and a variance application and guideline can be obtained at the North Dakota Department of Health–Division of Waste Management, 701-328-5166.

SECTION 108 PROSECUTION AND PROGRESS

108.01 PROSECUTION AND PROGRESS.

- A. **Preconstruction Conference.** A preconstruction conference, unless waived by the Engineer, will be held for each Contract at a time and place mutually established by the Contractor and Engineer before any Contract work begins. The Contractor shall notify the appropriate subcontractors, utility companies, and other interested parties of the time and place of the conference.
- B. **Progress Schedule.** The progress schedule shall be submitted to the Department. This schedule shall establish critical construction operations and will be used to check on work progress. The Contractor shall provide sufficient materials, equip-

ment, and labor to guarantee completion within the time established in the Contract. The progress schedule submitted shall be one of the following:

1. A "bar graph" progress chart shall be submitted within 10 days after opening bids. This progress chart shall be prepared according to instructions contained on the Department furnished form.

If, according to the progress chart, the Contractor is more than 30 days behind schedule on any item, an updated progress chart shall be submitted to the Engineer. Failure to provide an updated progress chart may result in withholding contract payments until one is submitted.

2. When specified, and within the required time frames, a Critical Path Method (CPM) schedule in the specified form shall be submitted. The schedule will be used for coordination, monitoring, and payment of all work under the Contract including all activity of subcontractors, vendors, and suppliers. Requirements and guidelines for the preparation, submission, and updating of the CPM schedule shall be as specified in the Contract.

The principles involved in the CPM schedule are as set forth in the Associated General Contractors publication, *The Use of CPM in Construction. A Manual for General Contractors and the Construction Industry*, latest edition.

108.02 NOTICE TO PROCEED.

The mailing or delivery of a copy of the executed Contract to the Contractor or authorized agent constitutes the "Notice to Proceed."

The Contract document's "time for completion" stipulates when time charges are to start on working day and completion day with guaranteed working day Contracts.

If the Contractor does not proceed as specified, the provisions of Section 108.05 will be applied.

108.03 LIMITATION OF OPERATIONS.

Construction shall be conducted in a manner and sequence to minimize interference with traffic, and with due regard to location of detours and provisions for handling traffic. The Contractor shall not begin work to the prejudice or detriment of work already started, and the Engineer may require a section of roadway to be finished before starting additional sections if the opening of the section is essential to public convenience.

If the prosecution of the work is discontinued, the Engineer shall be provided at least 24-hours notice before resuming operations.

No work on Sundays or Legal Holidays will be permitted unless specified in the Contract, or written permission is obtained from the Engineer.

108.04 DETERMINATION AND EXTENSION OF CONTRACT TIME.

- A. **Contract Time.** Time allowed for completing Contract work may be a fixed calendar date or a specified number of working days as stated in the Contract. Contract time will be adjusted according to this Section.

B. Working Day Contracts.

1. The maximum number of working days allowed for completion of the work will be stated in the Contract.
2. Working days will be counted from the starting date stated in the Contract or from the actual date on which on-site work is started, whichever is earlier. If execution of the Contract is delayed for reasons beyond the Contractor's control, the starting date for time charges will be amended to no earlier than the seventh calendar day after the execution date of the Contract or the date on-site work is started, whichever is earlier.
3. A working day will be charged for each calendar day (except as provided here for Saturdays, Sundays, Legal Holidays, and the period from November 15 to April 15) that work can be effectively prosecuted on the controlling operations for a minimum of 7 hours. If work on the controlling operations is limited by conditions beyond the Contractor's control, to more than 3 hours but less than 7 hours, 1/2 working day will be charged; for 3 hours or less, no time will be charged.
4. No working days will be charged for work performed on subsidiary items when weather or other conditions beyond the Contractor's control do not allow prosecution of the work on the controlling operations.
5. No working days will be charged for Saturday unless the Contractor elects to work, in which case time charges will be evaluated as for a normal work day. If the Contractor receives permission and works on a Sunday or Legal Holiday, time charged will be evaluated as for a normal work day. No working days will be charged from November 15 to April 15 inclusive even if work is performed.

C. Completion Date Contracts.

1. The Contract completion date shall be the fixed calendar date specified for completion of Contract work.
2. When the completion date Contract guarantees a stated minimum number of working days to complete the work, working days will be counted as provided for a working day Contract as stated in Section 108.04 B. If the number of working days counted between that date and the specified completion date are less than the guaranteed number, the completion date will be extended until the guaranteed number of working days have been counted.
3. When the completion date Contract does not guarantee a stated minimum number of working days for performance of the work, adverse weather will not be considered a basis for extension of the completion date. When the Contractor selects the starting date and schedule of progress, it will be understood that consideration was given to the effect of adverse weather; job problems which could be foreseen at the time of bid letting; and the exception of Sundays, Legal Holidays, and the time period from November 15 to April 15 inclusive.

D. Increased Work. The Contract time is based upon completion of the original quantities of work or as defined in Section 102.05. If satisfactory completion of

the Contract requires extra work of a type not included in the original Contract or requires an increase in quantities established in the Proposal, the Contract time will be extended on a basis commensurate with the amount and difficulty of the added work. For working day Contracts, the number of working days allowed for completion will be increased by the greater of: (1) a ratio equivalent to the percentage increase in Contract cost (except as noted below for additives), or (2) the Engineer's estimate of the number of working days required to perform the additional work. For completion date Contracts, or completion date Contracts with guaranteed working days, the additional time for completion will be based on the Engineer's estimate of the number of days required to perform the extra work.

Increases or decreases in the quantity of additives such as lime, fly ash, cement, or bitumen used in soil or base stabilization, or in concrete or bituminous mixtures will not be a basis for determining the extension of Contract time.

- E. **Delayed Delivery of Materials.** The Contract time may be extended due to delays in delivery of critical materials caused by national emergency, strikes, embargoes, area-wide shortages, or other reasons beyond the Contractor's control. The Contractor shall immediately notify the Engineer in writing when the controlling operation may be delayed due to delivery of critical materials. Delays in material delivery due to financial considerations, delayed placement of orders, or other conditions are considered within the Contractor's control and will not constitute a basis for extension of the Contract time.
- F. **Other Delays.** The Contract time may be extended if work is delayed for reasons beyond the control and without the fault or negligence of the Contractor. If the Contractor deems that a time extension is warranted, the Contractor shall promptly notify the Engineer in writing that additional time is requested. Reasons for a time extension may include, but are not restricted to: Acts of God or of the public enemy, acts of governmental authority, acts of the State or political subdivision, embargoes, labor disputes, and work suspensions ordered for the public interest, or other reasons not related to the Contractor's performance.
- G. **Request for Additional Time.** At any time before expiration of the original or extended Contract time, a written request may be made to the Engineer for additional time to complete the Contract. The request shall be supported by adequate documentation stating the reasons and basis for the request. The Engineer's determination will consider to what extent the delays were caused by conditions beyond the Contractor's control that may be offset by time lost due to the failure to diligently prosecute the work or to other conditions within the Contractor's control. A plea that insufficient time was specified is not a valid reason for a time extension. A time extension will not be considered for inclement weather or for the time period from November 15 to April 15, even if the the progress chart indicated that work was planned for this time period.
- H. **Conversion of Days.** When conversion of working days to calendar days or calendar days to working days is necessary, the factor for making such conversions shall be as follows; seven divided by the number of working days specified to be counted per week equals the conversion factor for converting working days to calendar days. The inverse of this formula shall be used when converting from calendar days to working days.
- I. **Weekly Statement of Time Charges.** After time charges against the Contract begin, the Engineer will furnish the Contractor with a weekly statement showing

the number of working days charged to the project for the preceding week and the total number of days charged to date. If the Contractor disagrees with the time charges shown on the weekly statement, a written notification must be given to the Engineer within 7 calendar days after the last day of the week covered by the report detailing the reasons the statement is incorrect. Failure to provide the written notification will be considered the Contractor's acceptance of the time charges as shown on the weekly statement and will constitute a waiver of claim for additional time.

- J. **Failure to Complete on Time.** For each calendar day or working day that any work remains uncompleted after the specified Contract time or approved extension has elapsed, the applicable sum listed in the following Section will be deducted from money due the Contractor. This sum shall not be considered and treated as a penalty but as liquidated damages due the Department for inconvenience to the public, added cost of engineering and supervision, and other items which cause an expenditure of public funds for the Contractor's failure to complete the work on time.

Schedule of Liquidated Damages.

Original Contract Over - To & Including	Amount Liquidated Damages	
	Calendar Day	Working Day
\$ 0 - \$ 50,000	\$ 150	\$ 200
50,000 - 100,000	325	350
100,000 - 250,000	460	525
250,000 - 500,000	600	725
500,000 - 1,000,000	700	925
1,000,000 - 2,000,000	825	1,150
2,000,000 - 3,000,000	925	1,350
3,000,000 - 5,000,000	1,050	1,525
5,000,000 - 7,500,000	1,175	1,700
7,500,000 - Up	1,300	1,850

Liquidated damages for failure to complete the work on time will be based on the working day charges for working day contracts, or on the calendar day charges for completion day contracts and completion date contracts with guaranteed working days.

Except on Completion Date Contracts or if otherwise stated in the Contract, liquidated damages will not be charged on any Contract during the period from November 15 to April 15 inclusive, nor during periods when the Project is in an authorized state of suspension.

On Completion Date Contracts, assessment of liquidated damages will continue until all work is completed except during periods of authorized suspension.

Permitting the Contractor or Surety to continue and to finish the work after the specified Contract time or approved extension has elapsed shall not be deemed as a waiver by the Department of any rights under the Contract.

The Department may suspend or reduce time charges after the Department has determined the work is substantially complete and in condition for safe and conven-

ient use by the traveling public. The project will be considered substantially complete when all necessary signing, striping, guardrail, and other safety appurtenances have been installed. For projects which will not be open to the traveling public, the project will be considered substantially complete when it is ready for the subsequent project. The suspension of time charges shall not be construed as a contractual right of the Contractor, and its application will be contingent upon the Contractor's diligence in completing the remaining items of work.

- K. Unsatisfactory Progress.** If satisfactory progress according to the proposed progress schedule submitted is not being made, the Engineer may arrange a meeting between the Contractor, the Contractor's Surety, and authorized Department representatives to discuss the work and to devise and arrange certain steps and procedures to be followed to restore the progress of the work to a satisfactory status conforming to the progress schedule.
- L. Incentive/Disincentive Provisions.** If it is in the traveling public's interest to have an early completion date, an incentive/disincentive provision may be established in the Contract. Completion requirements and details, and monetary payments and charges will be as specified in the Contract.

Section 108.04 J relating to liquidated damages will remain in effect.

108.05 DEFAULT AND TERMINATION OF CONTRACT.

If the Contractor:

- A. Fails to begin the work under the Contract within the time specified; or
- B. Fails to perform the work with sufficient resources to assure the prompt completion of the work; or
- C. Fails to perform the work satisfactorily or neglects or refuses to remove or replace rejected materials, or unacceptable work; or
- D. Discontinues the prosecution of the work; or
- E. Fails to resume work, which has been discontinued, within a reasonable time after notice to do so; or
- F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; or
- G. Allows any final judgment to be unsatisfied for 10 days; or
- H. Makes an assignment for the benefit of creditors without the Engineer's approval; or
- I. For any other cause, fails to carry on the work in an acceptable manner;

The Engineer may give notice in writing to the Contractor and Surety of such delay, neglect, or default.

If the Contractor or Surety does not proceed to comply within 10 days after such notice, the Department will (upon written notification from the Engineer of the fact of the de-

lay, neglect, or default) have full power and authority without violating the Contract to take the prosecution of the work out of the hands of the Contractor. The Department may appropriate or use any or all materials and equipment at the work site and may enter an agreement to complete the Contract according to its terms and provisions. The Department may use other methods required to complete the Contract in an acceptable manner.

All costs and charges incurred by the Department, together with the cost of completing the work under Contract, will be deducted from any monies due or which may become due the Contractor. If expenses exceed the sum which would have been payable under the Contract, the Contractor and the Surety shall be liable and shall pay the Department the amount of such excess.

108.06 TERMINATION OF CONTRACT.

The Department may, by written order of the Engineer, terminate the Contract or any portion of it after determining that for reasons beyond either Department or Contractor control, the Contractor is prevented from proceeding with or completing the work as originally contracted for, and that Contract termination would be in the public interest. Reasons for termination include, but are not limited to: Executive Orders of the President relating to prosecution of war or national defense; national emergency which creates a serious shortage of materials, labor, equipment, or funds which will continue for an unreasonable length of time; orders from duly-constituted authorities relating to energy conservation; restraining orders or injunctions obtained by third-party citizen action, or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor; changes in funding availability at either the State or Federal level; changes in Department priorities from any cause; act of God; or other circumstances beyond the control of the Contractor. The rights accorded the Department and the Contractor by this section shall not supersede or include other specific rights and responsibilities of each contained in the Contract.

When the Department orders termination of a Contract effective on a certain date, all completed items of work as of that date will be paid for at the Contract bid price. Payment for partially-completed work will be made according to Section 104.03 D.

Materials which have not been incorporated into the project may be purchased from the Contractor at the actual delivered cost to a prescribed location or disposed of as mutually agreed. All material purchased by the Department shall have been inspected, tested, and accepted by the Engineer and properly stored and maintained by the Contractor.

After receipt of notice of termination, the Contractor shall submit a claim as per Section 104.06 B for additional damages or costs not covered previously or elsewhere in the Contract. The claim shall be submitted within 60 days of the effective termination date. The claim may include such cost items as reasonable idle equipment time, mobilization efforts, overhead expenses attributable to the Project terminated, Subcontractor costs not otherwise paid for, actual idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other actual cost or damage item which the Contractor has incurred. The loss of anticipated profits will not be considered a legitimate item or part of any settlement.

The Contractor agrees to make all cost records available to the Department for determining the validity and amount of each item claimed, and to provide a basis for negotiating an equitable settlement.

Termination of a Contract or portion thereof shall not relieve the Contractor of any contractual responsibilities for the work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the work performed.

SECTION 109 MEASUREMENT AND PAYMENT

109.01 MEASUREMENT OF QUANTITIES.

All work completed under the Contract will be measured by the Engineer according to United States' standard measure.

- A. Longitudinal measurements for area computations will be made horizontally, and deductions will not be made for individual fixtures having an area of 9 square feet or less. Transverse measurements for area computations will be the dimensions shown on the Plans.

Miscellaneous items which are placed on slopes will be measured by the square yard on the slope.

- B. Structures will be measured according to lines shown on the Plans or as altered to fit field conditions.
- C. All items measured in linear units such as pipe culverts, guardrail, underdrains, etc. will be measured parallel to the base or foundation upon which the structures are placed.
- D. In computing volumes of excavation, the average end area method, prismatic method, or other acceptable methods will be used.
- E. The term "ton" will mean the short ton consisting of 2,000 pounds. All materials measured or proportioned by weight will be weighed on accurate, approved scales at locations designated by the Engineer. If material is shipped by rail, the car weight may be accepted provided only actual weight of material will be paid for. Car weights will not be acceptable for material processed through mixing plants. Trucks used to haul material will be weighed empty at times directed by the Engineer, and shall bear a plainly legible identification mark.
- F. Materials measured by volume shall be hauled in approved vehicles and measured at the point of delivery. Vehicles may be of any size or type, provided the body is shaped so the actual contents may be readily and accurately determined. All vehicles shall be loaded to their water capacity where possible. The Engineer may require the loads to be leveled at the delivery point to determine that actual volume of the load. Vehicles shall not haul loads that exceed the gross weight legal load limits.